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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Amendment of Section 73.202(b)
Table of FM Allotments
(Palestine and Frankston,
Texas)

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MM Docket No. _____
RM No. _____

To: Chief, Allocations Branch

PETITION FOR RULEMAKING

1. Nicol/Excel Broadcasting, LLC ("Nicol"), licensee of FM station KLIS, Palestine, Texas, by its attorneys, hereby petitions the Commission to institute a rulemaking proceeding to reallocate Channel 244C2 from Palestine to Frankston, Texas, and to modify Station KLIS(FM)'s license to specify Frankston as its community of license. Nicol seeks this change to increase its coverage area and the number of persons it serves, thereby making more efficient use of the broadcast spectrum.

KLIS(FM) presently operates on Channel 244A. Last year, however, KLIS(FM) filed a one-step application to change its Class from A to C2. On May 30, 1997, the Commission granted the application and amended the FM Table of Allotments to delete Channel 244A from Palestine, Texas and add Channel 244C2 to Palestine, Texas. *See Attachment A.* Nicol now desires to change its community of license to provide a first local transmission service for Frankston, Texas. This change of community of license will increase the station's coverage area and increase the number of residents that KLIS(FM) can serve.

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2. Granting KLIS(FM) authority to operate on Channel 244C2 at Frankston, Texas, complies with Section 1.420(i) of the Commission's rules. *See* 47 C.F.R. § 1.420(i) (1996). The Commission may modify KLIS(FM)'s authorization without considering competing expressions of interest because (1) the proposed allotment of Channel 244C2 to Frankston, Texas is mutually exclusive with the current allotment of Channel 244C2 at Palestine, Texas; (2) the proposed change in allotments will not deprive Palestine, Texas of its only aural service, but will provide Frankston with its first local service; and (3) Nicol's proposed change in allotments will result in a preferential distribution of facilities under the Commission's FM allotment priorities and policies. *See Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982)("FM Priorities"); *Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990).

3. In support of its request, Nicol respectfully submits the Technical Statement of John R. Furr of John Furr & Associates Inc. *See Attachment B*. Attachment B shows that the proposed allotment of Channel 244C2 to Frankston is mutually exclusive with the present allotment of Channel 244C2 at Palestine. Attachment B also shows that Channel 244C2 may be allotted to Frankston in full compliance with the separation requirements of Section 73.207(b) of the Rules. Attachment B demonstrates that the entire city of Frankston receives service from KLIS(FM)'s proposed reference coordinates in Frankston at maximum facilities, as required by Section 73.315 of the Commission's rules.

4. Section 307(b) of the Communications Act of 1934, as amended, requires the Commission " to provide a fair, efficient, and equitable distribution of radio service" to communities. *See* 47 U.S.C. § 307(b) (1996). Section 1.420(i) of the Commission's rules

authorizes amendment of the Table of FM Allotments and modification of the license of an FM station to specify a new community of license where the amended allotment is mutually exclusive with the licensee's present assignment. *See* 47 C.F.R. § 1.420(i) (1996). The Commission has emphasized that such changes in the Table of FM Allotments must satisfy the objectives of 47 U.S.C. § 307(b):

To insure that our intent is clear, . . . we hereby state unequivocally that Section 1.420(i) was adopted to further the Commission's long standing pursuit of the goals underlying Section 307(b) of the Act, and that any changes in the FM and TV Tables of Allotments must be consistent with those goals.

Modification of FM & TV Authorizations to Specify a New Community of License, 5 FCC Rcd 7094, 7095 (1990).

5. Nicol's proposed change in allotments should be granted because it satisfies both the mutual exclusivity requirement of Section 1.420(i) of the Rules and the objectives of fairness, efficiency and equitable distribution of 47 U.S.C. § 307(b). The Commission has licensed four full-time radio stations to Palestine. Palestine has a population of approximately 19,300. *See Rand McNally Commercial Atlas and Marketing Guide* 531 (129th ed. 1998). Frankston, which currently has no local aural transmission service, has a population of approximately 1,127. *Id.* at 528. Nicol's proposed allotment would result in a preferential arrangement of allotments under the Commission's FM allotment priorities and policies. Under this policy, the Commission "conventionally favor[s] communities seeking their first local service over those seeking multiple services." *See Land O'Lakes Broad. Corp.*, 103 FCC 2d 758 (1986); *see also FM Priorities*, 90 FCC 2d 88 (1982.) The Commission favors a first aural service over both second aural and first local service. *See Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989). The Bureau

has proved quite willing to approve reallocations that satisfy the allotment priorities. In *Dangerfield and Ore City, Texas*, for example, the Commission allowed an FM licensee to change its community of license even though it meant the loss of the community's sole FM service. See *Dangerfield and Ore City, Texas*, in MM Dkt. No. 97-253 (rel. Jan. 9, 1998).

The reallocation of Channel 244C2 will not result in any loss as dramatic as that of *Dangerfield*. Here, the proposed reallocation of KLIS(FM) would bring Frankston its first local service, thereby fulfilling an important FM allotment priority. In Palestine, meanwhile, two full-time FM stations, KBHT and KYYK, and one full-time AM station, KNET, would remain. Nicol's proposed change in community of license will offer a first local transmission service to Frankston and will leave Palestine with three local broadcast stations.

6. Frankston qualifies as an eligible community. Section 307(b) of the Communications Act provides that the Commission shall distribute facilities among the "several states and communities." See 47 U.S.C. § 307(b) (1996). Incorporated cities and census-designated places presumptively qualify as communities, regardless of size or population. See e.g., *Cal-Nev-Ari, Boulder City, and Las Vegas, NE*, 10 FCC Rcd 7717 (1995). Frankston's incorporated status makes the town an eligible community for frequency allocation purposes. Thus, the only remaining question is whether moving KLIS(FM) from Palestine to Frankston is otherwise in the public interest.

7. Reallocating Channel 244C2 to Frankston promotes the public interest. In addition to its incorporated status, Frankston's political, social and commercial life enhance its status as a community. Even if a community is neither incorporated nor listed in census reports, it can qualify as a community so long as it represents a "geographically identifiable population

grouping." *Kenansville, FL*, 5 FCC Rcd 2663 (1990). The Commission has no "hard and fast rule to apply in deciding whether a particular population grouping constitutes a community and all relevant facts in each case must be weighed." *Penacook, NH*, 2 FCC Rcd 459 (1987). The Commission had said that objective evidence may include the presence of fire departments, churches, post offices, and similar local institutions. Frankston, an incorporated town in Anderson County, contains more than one-hundred-and-thirty-seven businesses, including many that identify themselves with the community of Frankston, such as Frankston Farm and Ranch Supply, the Frankston Health Care Center, the Frankston Lumber Company, and Frankston Reliance Gas Company. Frankston also contains a police station, a volunteer fire department, a post office and churches. The incorporated town of Frankston possesses the civic, social, and commercial attributes necessary to form a distinct community. Reallocating Channel 244C2 to Frankston will serve the public interest by providing the citizens of Frankston with a first broadcast outlet for local expression.

8. Nicol's proposal not only grants Frankston its first local transmission service, but achieves these benefits without any significant reduction in the level of service that Palestine currently receives. Although "the public has [a] legitimate expectation that existing service will continue, and this expectation of continued service is a factor that must be weighed independently against the service benefits that may result from reallocating a channel from one community to another," *see Dangerfield and Ore City, Texas*, in MM Dkt. No. 97-253 (rel. Jan. 9, 1998), the Commission had repeatedly adhered to "the long-standing presumption that every community of appreciable size needs at least one station for local self-expression." *See Land O'Lakes Broad. Corp.*, 103 FCC 2d 758 (1986).

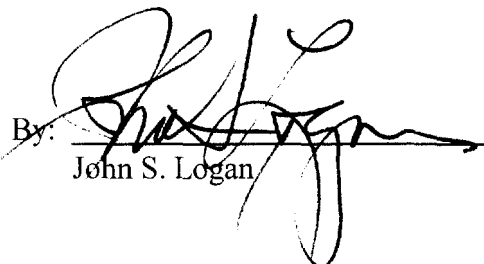
While the reallocation of Channel 244C2 will result in a small loss to the existing service area, the reallocation will provide first local service to Frankston. The attached Technical Narrative shows that KLIS(FM) as now licensed provides aural reception service to 94,743 persons in 7,034 square kilometers. The station's proposed site in Frankston will serve 256,298 person in 8,528 square kilometers — increasing the number of persons served by 1,494. While a loss area of 2,537 square kilometers in the 60 dBu contour will be created if Nicol's proposal is adopted, any loss in service provided by KLIS(FM) will not deprive Palestine of its sole local existing service. *See Attachment B.* Indeed, two FM stations, KBHT and KYYK, and one AM station, KNET, will remain licensed to Palestine. Thus, the benefits of providing a first local broadcast service to Frankston far outweigh the minor reduction in coverage for the already well-served residents of Palestine, Texas.

CONCLUSION

WHEREFORE, for the foregoing reasons, Nicol respectfully requests that the Commission amend Section 73.202(b) of its Rules to allot Channel 244C2 at Frankston, Texas and to delete Channel 244C2 at Palestine, Texas, and modify Nicol's authorization to specify operation thereon.

Respectfully submitted,

DOW, LOHNES & ALBERTSON, PLLC

By: 
John S. Logan

February 3, 1998

FEDERAL COMMUNICATIONS COMMISSION
1919 M STREET, NW
WASHINGTON, DC 20554

MASS MEDIA BUREAU
AUDIO SERVICES DIVISION
TECHNICAL PROCESSING GROUP
APPLICATION STATUS: (202) 418-2730
HOME PAGE: www.fcc.gov/mmb/asd/

MAY 30 1997

PROCESSING ANALYST: David H. Trout
TELEPHONE: (202) 418-2740
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Mr. H. Anthony Lehv
Dow, Lohnes & Albertson, PLLC
Suite 800
1200 New Hampshire Avenue, NW
Washington, DC 20036-6802

Re: KLIS (FM); Palestine, Texas
Nicol/Excel Broadcasting, LLC
BPH-970131IC

Dear Counsel:

The staff has under consideration the above-captioned minor change "one-step" application for a construction permit to change from Class A to Class C2 on Channel 244 [96.7 MHz] pursuant to the *Report and Order* in MM Docket 92-159.¹ The application also proposes to increase antenna height and effective radiated power.

An engineering study of the proposed site finds that it is in full compliance with the Commission's allotment standards, and the application meets the Commission's acceptability and grantability standards.² Therefore, pursuant to the *Report and Order* in MM Docket 92-159, we find that the public interest would be served by substituting Channel 244C2 for Channel 244A at Palestine, Texas.

Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303, and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b), 0.283, 1.420, 73.203(b), and 73.3573 of the Commission's Rules, IT IS ORDERED that, effective as of the date of this letter, the FM Table of Allotments, 47 CFR § 73.202(b), IS AMENDED as follows:


<u>Community</u>	<u>Channel Number</u>
Palestine, Texas	Delete 244A Add 244C2

¹ *Amendment of the Commission's Rules to Permit FM Channel and Class Modifications by Application*, 8 FCC Rcd 4735, 58 Fed. Reg. 38534 (July 19, 1993).

² The geographic coordinates for both the allotment site and the transmitter site are 31° 46' 48" North Latitude, 95° 38' 23" West Longitude.

IT IS FURTHER ORDERED that application BPH-970131IC IS HEREBY GRANTED. If the facilities specified in this permit are not constructed within the time specified, or if FCC Form 307, Application for Extension of Broadcast Construction Permit, is not on file by the expiration date of construction permit BPH-970131IC, then the subject permit will be declared forfeit and will be cancelled.

Sincerely,


for Daniel J. Fontaine
Supervisory Engineer
Audio Services Division
Mass Media Bureau

cc: Nicol/Excel Broadcasting, LLC
J F & A Communications Consultants



United States of America

FEDERAL COMMUNICATIONS COMMISSION
FM BROADCAST STATION CONSTRUCTION PERMIT

Official Mailing Address:

NICOL/EXCEL BROADCASTING, L.L.C.
P.O. BOX 1067
CROCKETT, TX 75835

Authorizing Official:

fa *James D. Fontaine*
Daniel J Fontaine
Supervisory Engineer
Audio Services Division
Mass Media Bureau

Grant Date: **MAY 30 1997**

Call Sign: KLIS

This permit expires 3:00 a.m.
local time, 18 months after
grant date specified above.

Permit File No.: BPH-970131IC

Subject to the provisions of the Communications Act of 1934, as amended, subsequent acts and treaties, and all regulations heretofore or hereafter made by this Commission, and further subject to the conditions set forth in this permit, the permittee is hereby authorized to construct the radio transmitting apparatus herein described. Installation and adjustment of equipment not specifically set forth herein shall be in accordance with representations contained in the permittee's application for construction permit except for such modifications as are presently permitted, without application, by the Commission's Rules.

This permit shall be automatically forfeited if the station is not ready for operation within the time specified (date of expiration) or within such further time as the Commission may allow, unless completion of the station is prevented by causes not under the control of the permittee. See Sections 73.3598, 73.3599 and 73.3534 of the Commission's Rules.

Equipment and program tests shall be conducted only pursuant to Sections 73.1610 and 73.1620 of the Commission's Rules.

Name of Permittee:

NICOL/EXCEL BROADCASTING, L.L.C.

Station Location:

TX-PALESTINE

Frequency (MHz): 96.7

Channel: 244

Class: C2

Hours of Operation: Unlimited

Transmitter location (address or description):

NORTH QUEEN STREET ROAD, PALESTINE, ANDERSON COUNTY, TEXAS.

Transmitter: Type Accepted. See Sections 73.1660, 73.1665 and 73.1670 of the Commission's Rules.

Transmitter output power: As required to achieve authorized ERP.

Antenna type: (directional or non-directional): Non-Directional

Antenna Coordinates: North Latitude : 31 46 48
West Longitude : 95 38 23

	Horizontally Polarized Antenna	Vertically Polarized Antenna
Effective radiated power in the Horizontal Plane (kW).....:	50	50
Height of radiation center above ground (Meters).....:	58	58
Height of radiation center above mean sea level (Meters).....:	241	241
Height of radiation center above average terrain (Meters).....:	117	117

Antenna structure registration number: none

Overall height of antenna structure above ground
(including obstruction lighting if any): 67 Meters

Obstruction marking and lighting specifications for antenna structure:

It is to be expressly understood that the issuance of these specifications is in no way to be considered as precluding additional or modified marking or lighting as may hereafter be required under the provisions of Section 303(q) of the Communications Act of 1934, as amended.

PARAGRAPH 01.0, FCC FORM 715 (OCTOBER 1985):

Antenna structures shall be painted throughout their height with alternate bands of aviation surface orange and white, terminating with aviation surface orange bands at both top and bottom. The width of the bands shall be equal and approximately one-seventh the height of the structure, provided however, that the bands shall not be more than 100 feet nor less than 1 and 1/2 feet in width. All towers shall be cleaned and repainted as often as necessary to maintain good visibility.

PARAGRAPH 03.0, FCC FORM 715 (APRIL 1985):

There shall be installed at the top of the structure one 300 m/m electric code beacon equipped with two 620- or 700-watt lamps (PS-40, Code Beacon type), both lamps to burn simultaneously, and equipped with aviation red color filters. Where a rod or other construction of not more than 20 feet in height and incapable of supporting this beacon is mounted on top of the structure and it is determined that this additional construction does not permit unobstructed visibility of the code beacon from aircraft at any normal angle of approach, there shall be installed two such beacons positioned so as to insure unobstructed visibility of at least one of the beacons from aircraft at any normal angle of approach. The beacons shall be equipped with a flashing mechanism producing not more than 40 flashes per minute nor less than 12 flashes per minute with a period of darkness equal to approximately one-half of the luminous period.

PARAGRAPH 11.0, FCC FORM 715 (APRIL 1985):

At the approximate mid point of the over-all height of the tower there shall be installed at least two 116- or 125-watt lamps (A21/TS) enclosed in aviation red obstruction light globes. Each light shall be mounted so as to insure unobstructed visibility of at least one light at each level from aircraft at any normal angle of approach.

PARAGRAPH 21.0, FCC FORM 715 (APRIL 1985):

All lighting shall burn continuously or shall be controlled by a light sensitive device adjusted so that the lights will be turned on at a north sky light intensity level of about 35 foot candles and turned off at a north sky light intensity level of about 58 foot candles.

Special operating conditions or restrictions:

1. The permittee/licensee must reduce power or cease operation as necessary to protect persons having access to the site, tower or antenna from radiofrequency radiation in excess of FCC guidelines.
2. KLIS shall not commence program test operations on Channel 244C2 until KMOO (FM), Mineola, Texas commences program test operations on Channel 260. Nor shall a license be granted to cover this construction permit until a license has been granted for KMOO on Channel 260.

*** END OF AUTHORIZATION ***

TECHNICAL NARRATIVE

This technical showing is prepared to support Nicol/Excel Broadcasting proposal to change city of license of KLIS from Palestine, Texas to Frankston, Texas. This proposal is to render first service to Frankston, Texas.

The proposed reference coordinates are: 32°02'02" N, 95°24'30" W.

Exhibit A demonstrates that this site meets all spacings as required by §73.207 of the FCC Rules for this class operation. Exhibit B demonstrates that the entire city of Frankston, Texas receives service from the reference coordinates at maximum facilities, as required by §73.315. This site is 36 kilometers from the current authorized site.

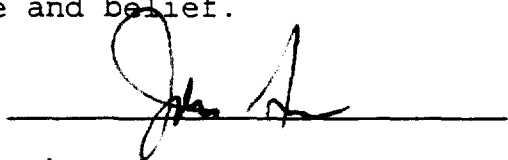
According to the 1990 US Census, Frankston, Texas is designated as a "town" and has a population of 1,127 persons in 514 households. The adjacent Frankston "census division" has 2076 persons in 1031 households. Frankston is located in Anderson County which has 48,024 persons. The city is located outside any urbanized area.

The licensed facility is operating at 3 kW, Class A (BLH-820510AE). KLIS holds a CP for 50 kW at 117 meters, Class C2 (BPH-970131IC). When compared to the Rulemaking site at maximum Class C2 parameters at the new reference coordinates, there is a lost area in the 60 dBμ contour, as is shown in Exhibit C daytime and Exhibit D nighttime. Because the CP is not built or operating, there is no actual service lost. However, these exhibits show that the entire CP area is covered with 5 or more services daytime with 1 small area having 3 services and another small area with 4 services. The proposed station serves the entire area served by the licensed Class A station.

The CP facility serves 94,743 persons in 7,034 square kilometer with the 60 dBμ while this proposal will serve 256,298 persons in 8,528 square kilometers. The population lost is 23,865 in 2,537 square kilometers.

My qualifications are a matter of record with the FCC. The above information and attached exhibits are true and correct according to my knowledge and belief.

January 29, 1998



John R. Furr

JF&A
COMMUNICATIONS
CONSULTANTS

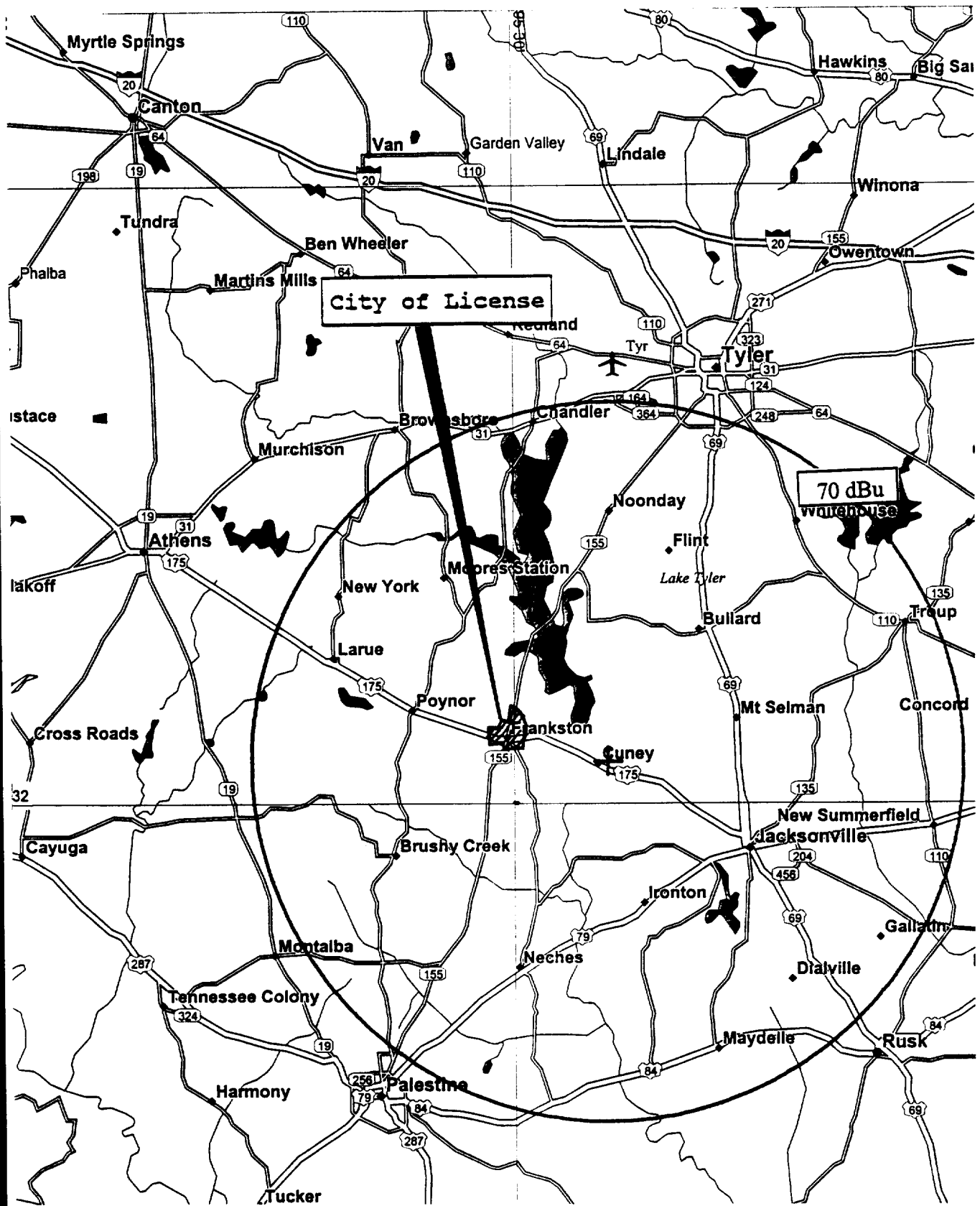
KLIS
FRANKSTON, TX
NARRATIVE

PAGE 1

>>>>>> Study For Channel 244 96.7 mHz <<<<<<<

NEW	HUDSON, TX	242	A	96.3	3.6	31-24-28	92.4	55	
APP	OUT OF MARKET PRODUCT			-950817MB	129	94-45-53	138.5	+37.4	CLEAR

KLIS
FRANKSTON, TX
EXHIBIT A



JF&A
COMMUNICATIONS
CONSULTANTS

CITY OF LICENSE COVERAGE

KLIS
FRANKSTON, TX
EXHIBIT B

